



Excess Liability Trust Fund (ELTF) Program

**Annual Report of Fund Administration
Prepared for the Financial Assurance Board
November 13, 2001**

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**Indiana Department of Environmental Management
Excess Liability Trust Fund Program
Office of Land Quality**

**Annual Report of Fund Administration
for January 1993 through September 2001**

INTRODUCTION

The Indiana Department of Environmental Management (IDEM), submits to the Financial Assurance Board, its Annual Report of Fund Administration for the Excess Liability Trust Fund (ELTF) Program.

This report is prepared in accordance with 328 IAC 1-2-2, which requires: (i) A financial statement detailing information for the management and oversight of the fund, including facts concerning the amount of money currently in the fund, the amount of money obligated for corrective actions and third party liability claims, and estimates of future revenue for and demands on the fund; (ii) an overview of the fund claims process; and (iii) a report of the number of claims made against the fund that were approved and denied during the reporting year.

PROGRAM OVERVIEW

Program Management

ELTF claims and technical reviews were processed by IDEM personnel from January 1, 1993 until September 1998. The anticipation of an increase in claims and technical documents to be submitted as a result of the EPA requirement for owners and operators to upgrade their Underground Storage Tanks (USTs) or close them by December 22, 1998, prompted IDEM to hire a private consultant that had the knowledge and resources to handle such a large claims load. Peterson Consulting (now Navigant) was hired in September 1998 to take over these duties. Navigant's ability to increase the amount of resources allocated to handle the increase in claims (507 - '98, 917 - '99, and 1626 - '00, 1632 thru 9/30/01) has enabled the claims process to remain on the proper time line.

2001 Legislative and Rule Changes

Legislative changes to IC 13-23:

- Increased the \$1 million maximum that could be paid per occurrence to \$2 million
- Allows a transferee of property to be eligible for reimbursement from the ELTF, as long as the site was eligible under the previous owner
- Increased the \$1 million maximum that could be paid per year to an owner of 100 or fewer tanks to \$2 million per year. Increased the \$2 million maximum that could be paid per year to an owner of more than 100 tanks to \$3 million per year
- Penalties for failure to pay tank fees were reduced from \$50/day/tank to \$2,000/year/tank

Changes to Rule 328 IAC:

- Changed several of the "reimbursable cost" rates to reflect the current industry rates
- Created definitions for "emergency measures" and "site characterization"

- Fund access was expanded to include "persons designated by eligible tank owners and operators" and "subsequent owners of the property upon which tanks were located if the previous tank owner or operator was eligible"
- Administrative changes were made that reflect the new Risk Integrated System of Closure (RISC) along with changes to incorporate the statutory language changes

Claims Processing

The ELTF Section oversees, reviews, and processes all claims seeking reimbursement from the ELTF. Further, the ELTF Section makes recommendations regarding payment to claimants based on a thorough review of several eligibility requirements and cost guidance. Eligibility requirements include, but are not limited to, the following:

1. USTs must be registered within 30 days of installation or taking ownership
2. Pay a minimum of 50% of the required tank fees. Fees have been collected since 1988. ('88 & '89/\$90/tank, '90 - '99/\$290/tank, and '00 - current/\$90/tank)
3. Report any suspected release within 24 hours of discovery
4. The costs are for an approved emergency action
5. Have an approved Initial Site Characterization (ISC)
6. Have an approved Corrective Action Plan (CAP)
7. Be in compliance with all applicable federal and state laws and regulation governing USTs by the date the requirements became effective
8. Meet the appropriate deductible for the site:

\$35,000	- if the tank is not in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission (no upgrades have been done)
\$30,000	- if the tank is in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission; and is not a double wall tank
\$25,000	- if the tank is in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission; and is a double wall tank

Following a review of a claimant's eligibility, the ELTF Section ensures that all costs associated with the claim are reasonable. The Solid Waste Management Board promulgated rules under 328 IAC 1-3-5 which establish a cost range for cleanup activities. Costs are determined by the ELTF Section as reasonable by reviewing the following:

1. The dollar amount or range claimed
2. The activity outlined in the emergency action, ISC, or CAP
3. The scope and timing of the response activities

The charts in Appendix A outline the general flow of the ELTF reimbursement process.

Program Objectives

1. Providing a mechanism for the reimbursement of monies spent by underground storage tank owners and operators on the cleanup of petroleum released from underground storage tanks
2. Providing a means of providing financial assurance for owners and operators of underground petroleum storage tanks and providing a source of money for the indemnification of third parties
3. Process all claims for reimbursement within 60 days of receipt of the application

Legal / Appeal Process

An applicant has a right to file a Petition for Review whenever a claim or any part thereof is denied by the agency. The Applicant must file a Petition for Review to begin the appeals process. The Petition should be sent to the Office of Environmental Adjudication (OEA) and must contain certain information. The Office of Legal Counsel in IDEM represents the Excess Liability Trust Fund in these cases. If an applicant fails to file a Petition for Review in a timely fashion, the applicant loses the right to ask for a review of the ELTF's decision and the decision is final.

Once the Petition has been filed, the OEA typically orders the parties to attend a pre-hearing conference. At the pre-hearing conference, the parties may discuss the issues and determine whether the matter may be settled or whether the OEA needs to establish a schedule for a hearing. This schedule will include dates by which certain types of pleadings must be filed, discovery must be conducted and a date on which a hearing will be held.

Typically, applicants have 3 types of objections to a denial of ELTF funds. The first objection involves issues regarding the disapproval of a Corrective Action Plan. The second objection is to ELTF's determination that the applicant is not 100% eligible for reimbursement because of a failure to pay all annual tank fees. The third objection is to the disallowance of costs because the costs exceed the reasonable cost rules or because the costs are not eligible for reimbursement. (Typically, the applicant does not have to appeal a determination that the cost is not supported by sufficient back up documentation. The ELTF will reconsider these costs if additional documentation is produced.) Most of the cases that are appealed raise more than one issue.

The majority of Excess Liability Trust Fund cases, which involve disputes regarding CAPs, are settled. The parties are usually able to reach an agreement as to the technical merits of the CAP.

Cases which involve disputes about tank fees, may be settled if the applicant can produce additional evidence that the tank fees were paid. If the applicant cannot produce such evidence, the parties will have to present the OEA with evidence to support its position. The OEA will make a determination, based upon the evidence presented, as to which party is right.

Cases that involve the disallowance for costs may be settled if the applicant can produce additional evidence that the ELTF made an error in the calculation of eligible costs. However, most of these cases will be decided by the OEA.

The number of appeals has remained about the same over the years. There are approximately 25 to 30 cases currently pending before the OEA.

THIRD PARTY CLAIMS

Third Party Liability. The damage a tank owner or operator is legally obligated to pay for the injury suffered by a third party as the result of a release. Third party liability includes bodily injury and property damage.

Eligibility. Only owners/operators that are eligible for reimbursement may be eligible for monies for the indemnification of third parties.

Payment. The Attorney General's office determines whether a third party claim is reasonable. The ELTF program then processes the claim for payment.

History. All 3rd 3rd party claims have been approved for payment.

Excess Liability Trust Fund
Fund Historical Activity and Projections Report
Facility and Claims Totals
For January 1993 through September 2001

Fund Activity

Total dollars requested	\$215,654,212
Total dollars paid	\$91,712,757
Total dollars approved in the deductible	\$27,590,209
Total dollars paid + approved (deductible)	\$119,302,966

Percentage of total dollars paid vs. requested, not including the deductible	43%
Percentage of total dollars approved vs. requested, including the deductible	56%

** Percentages are reflective of both eligible and ineligible facilities*

Facility Activity

Active UST facilities	4,530
Active LUST Sites (may not be an active facility)	3,883
LUST Sites that require No Further Action	2,216
Claims submitted	4,455
Facilities submitting claims	1,062
Average Number of claims per facility	4
Facilities receiving reimbursement	547
Facilities eligible for reimbursement (pre-approvals, pending Initial Site Characterization and/or Corrective Action Plan approval, and those sites not yet reaching their deductible)	406
Facilities not eligible for reimbursement from the fund	109

Eligible Facilities

Number of facilities on which payment has been made	547
Average dollars approved per facility, including the deductible	\$218,104
Average percentage approved per facility, including the deductible	73%
Average dollars paid per facility, not including the deductible	\$158,321
Average percentage paid per facility, not including the deductible	43%

Eligible & Ineligible Facilities

Approved Facilities	953
Ineligible Facilities	<u>109</u>
Total Facilities	1,062
Average dollars paid per facility, not including the deductible	\$86,359
Average dollars approved per facility, including the deductible	\$112,338
Average dollars requested per facility	\$226,290

Fund Projections

In an attempt to determine future expenditures from the Fund, both the current eligible claim population and the potential claim population were taken into consideration.

Currently Eligible and Potentially Eligible Facilities:

Dollars that could potentially be applied for by facilities currently receiving reimbursement:

Facilities receiving reimbursement	547
Maximum dollar amount that can be paid per incident	\$1 million*

Note: The maximum dollar amount that can be paid per incident will be increased to \$2 million November 16, 2001.

Total potential dollars	547,000,000
Less: Total dollars already approved for the 547 sites	114,191,573
(547 x \$1 mil) - \$114,191,573) =	432,808,427

Dollars that could potentially be applied for by facilities currently in ELTF:

Facilities receiving reimbursement	547
Facilities potentially eligible for reimbursement (pre-approvals, pending Initial Site Characterization and/or Corrective Action Plan approval, and those sites not yet reaching their deductible	406
Total facilities	953
Maximum dollar amount that can be paid per incident	<u>\$1 million</u>
Total potential dollars	\$ 953 million
Less: Total dollars already approved for the 719 sites	<u>114,191,573</u>
(953 x \$1,000,000) - \$114,191,573) =	838,808,427

Potential LUST Sites that have yet to apply for ELTF:

Dollars that could potentially be paid to facilities with releases that have yet to apply for ELTF Funding

Sites with releases that are currently undergoing clean up:	3,883
Number of sites (1,062 of 3,883) already applying for ELTF:	<u>1,062</u>
Total Sites that could potentially apply	2,821
Maximum dollar amount that can be paid per incident (or)	\$ 1 million
Avg. dollars paid per facility	<u>158,321</u>

Potential dollars that could be paid to facilities yet to apply to ELTF:

Percentage (10% & 25%) of 2,821 sites that might apply

Using: ***New Facilities for Current Year , 99 sites***

Maximum dollar amount that can be paid per incident \$1mil (or)	\$99 mil
Avg. dollars paid per facility \$9,479	\$938,421

10%, 282 sites

Maximum dollar amount that can be paid per incident \$1mil (or)	\$282 mil
Avg. dollars paid per facility \$158,321	\$44,646,522

25%, 705 sites

Maximum dollar amount that can be paid per incident \$1 mil (or)	\$705 mil
Avg. dollars paid per facility \$158,321	\$111,616,305

**Excess Liability Trust Fund
Revenue and Expense Report
Prepared for the ELTF Financial Assurance Board
For July 1, 1996 through June 30, 2001**

Fiscal Year	1997 (7/96-6/97)	1998 (7/97-6/98)	1999 (7/98-6/99)	2000 (7/99-6/00)	2001 (7/00-6/01)	2002 (7/01-9/30/01)
Beginning Balance	\$35,378,715.00	\$32,919,346.00	\$51,083,188.00	\$68,680,896.00	\$78,851,383.00	\$87,576,026.00
Claims Paid	(\$11,320,965.00)	(\$10,454,424.00)	(\$9,596,444.00)	(\$16,732,324.00)	(\$24,914,462.00)	(\$7,009,814.00)
Revenue:						
Interest to date	\$1,637,957.00	\$1,097,319.00	\$2,470,107.00	\$3,460,667.00	\$5,098,170.00	\$415,389.00
Oil Inspection/UST Tank Fee	\$7,768,131.00	\$28,009,275.00	\$25,593,792.00	\$26,987,875.00	\$32,467,520.00	\$7,596,341.00
Penalties	<u>\$1,477.00</u>	<u>\$0.00</u>	<u>\$14,220.00</u>	<u>\$91,636.00</u>	<u>\$47,269.00</u>	<u>\$51,128.00</u>
Total Revenue	\$9,535,565.00	\$29,106,594.00	\$28,078,119.00	\$30,540,178.00	\$37,612,959.00	\$8,062,858.00
Expenses:						
Personal Services	\$315,538.00	\$318,437.00	\$274,896.00	\$92,458.00	\$152,555.00	\$12,297.00
Office Exp. (postage, phone, etc.)	\$10,144.00	\$7,610.00	\$9,109.00	\$15,702.00	\$9,118.00	\$3,022.00
Contractual Services:						
Rent	\$30,491.00	\$30,501.00	\$30,935.00	\$0.00	\$0.00	\$0.00
Navigant Consulting	N/A	N/A	\$558,723.00	\$1,608,816.00	\$2,036,299.00	\$545,863.00
Revenue Indirect Costs	N/A	N/A	N/A	\$23,309.00	\$0.00	\$0.00
Supplies	\$1,521.00	\$3,268.00	\$3,155.00	\$589.00	\$1,292.00	\$1,243.00
Equipment	\$220.00	\$231.00	\$0.00	\$0.00	\$0.00	\$0.00
Physical Exams	\$1,250.00	\$2,556.00	\$3,247.00	\$1,425.00	\$467.00	\$300.00
Legal Costs Fund Transfer	\$122,374.00	\$122,163.00	\$0.00	\$0.00	\$0.00	\$0.00
Indiana Development Finance Auth N/A		N/A	N/A	\$120,000.00	\$0.00	\$0.00
Administrative Funds Transfer	N/A	N/A	N/A	\$1,772,879.00	\$1,772,879.00	\$1,885,639.00
In-State Travel	\$2,152.00	\$2,263.00	\$2,477.00	\$788.00	\$920.00	\$161.00
Out-of-State Travel	\$2,073.00	\$1,299.00	\$1,425.00	\$1,401.00	\$324.00	\$1,129.00
Operating Expenses	<u>(\$491,671.00)</u>	<u>(\$488,328.00)</u>	<u>(\$883,967.00)</u>	<u>(\$3,637,367.00)</u>	<u>(\$3,973,854.00)</u>	<u>(\$2,449,654.00)</u>
Year End Fund Balance	<u>\$32,919,644.00</u>	<u>\$51,083,188.00</u>	<u>\$68,680,896.00</u>	<u>\$78,851,383.00</u>	<u>\$87,576,026.00</u>	<u>\$86,179,416.00</u>

**Excess Liability Trust Fund
Claims Status Report
For July 1, 1996 through September 30, 2001**



Year	Claim Receipts	Amount Requested	Number of Claims Reimbursed	Amount Reimbursed	Percentage Reimbursed	
					Dollars	Claims
1993	76	\$12,609,751	35	\$4,181,087	33%	46%
1994	88	\$12,419,055	29	\$2,381,961	19%	33%
1995	193	\$12,516,618	75	\$2,369,040	19%	39%
1996	399	\$22,041,841	187	\$9,404,127	43%	47%
1997	517	\$21,327,804	347	\$11,158,196	52%	67%
1998	648	\$22,543,085	440	\$9,831,733	44%	68%
1999	1105	\$37,609,735	725	\$13,305,428	35%	66%
2000	1626	\$37,459,148	1204	\$20,706,003	55%	74%
2001*	1632	\$37,127,175	1073	\$19,899,457	54%	66%

* Through September 30, 2001.

**Indiana Department of Environmental Management
Excess Liability Trust Fund
Claim Activity Report
for January 1, 2001 through September 30, 2001**

Number of Claims Submitted

First Submittals	136
Subsequent Claims	1,105
Resubmittal Claims	<u>391</u>
	1,632

Number of Claims Processed

Completed Claims	1,267
Denied Claims	<u>202</u>
	1,469

Dollars Requested vs. Dollars Reimbursed

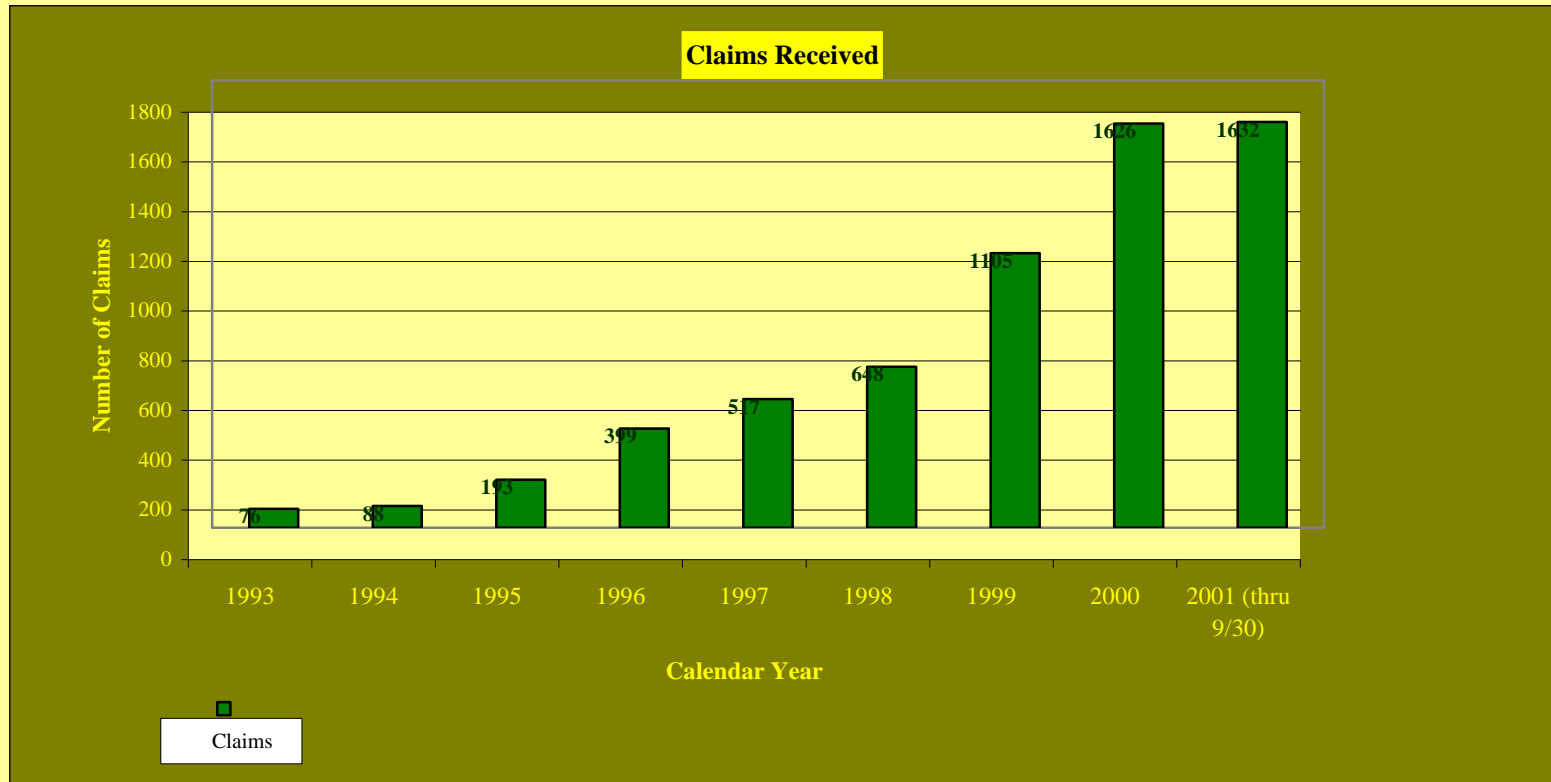
Total Dollars Requested	\$37,127,175
Average Dollars Requested Per Claim	\$25,274
 Total Dollars Reimbursed	 \$19,899,457
Average Dollars Reimbursed Per Claim	\$15,706

Facility Activity

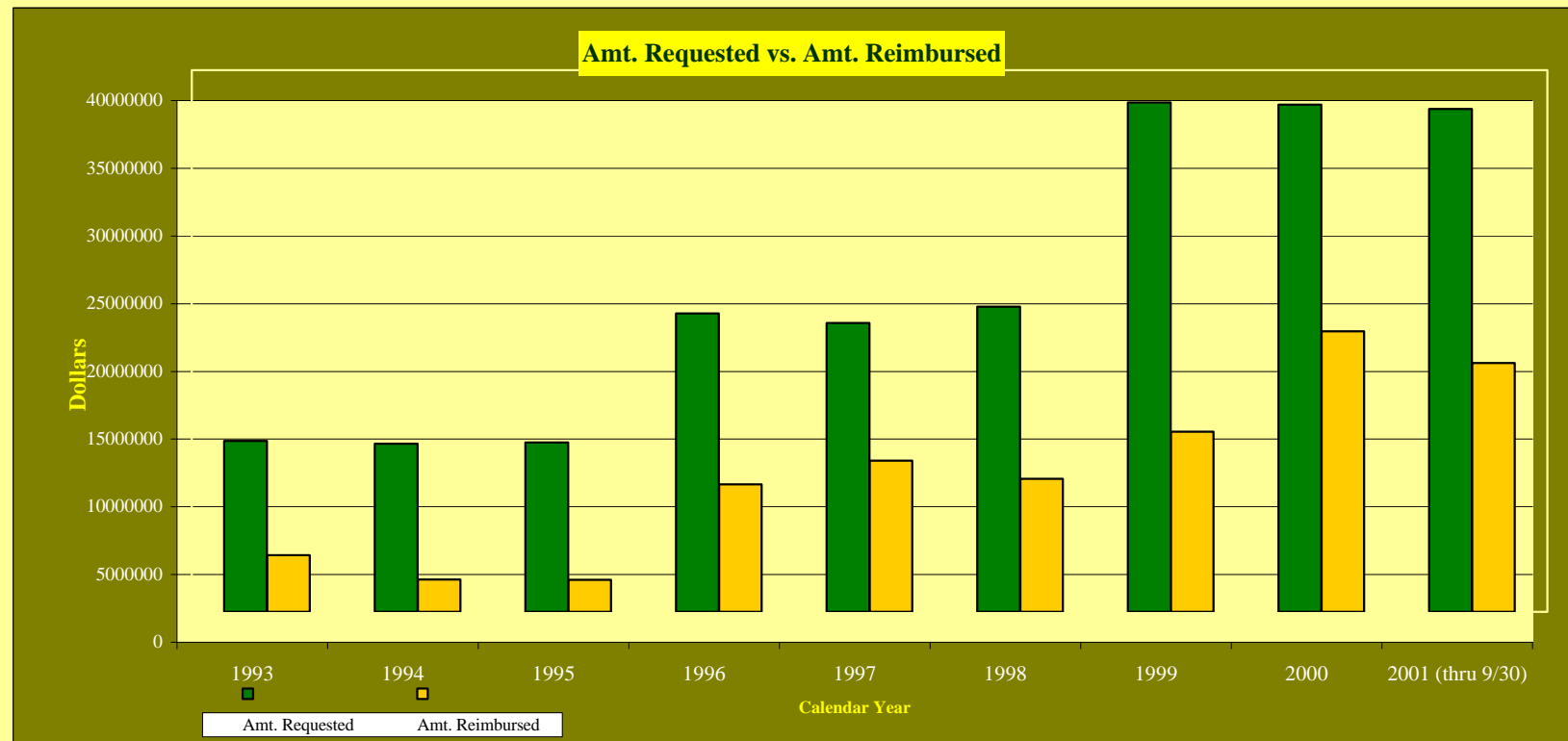
Number of facilities submitting claims	527
Average Dollars Requested by Facility	\$70,450
Number of facilities receiving reimbursement	377
Average Dollars Reimbursed by Facility	\$52,784
Percentage of Total Dollars Reimbursed vs. Total Dollars Requested per Facility	75%

APPENDIX A

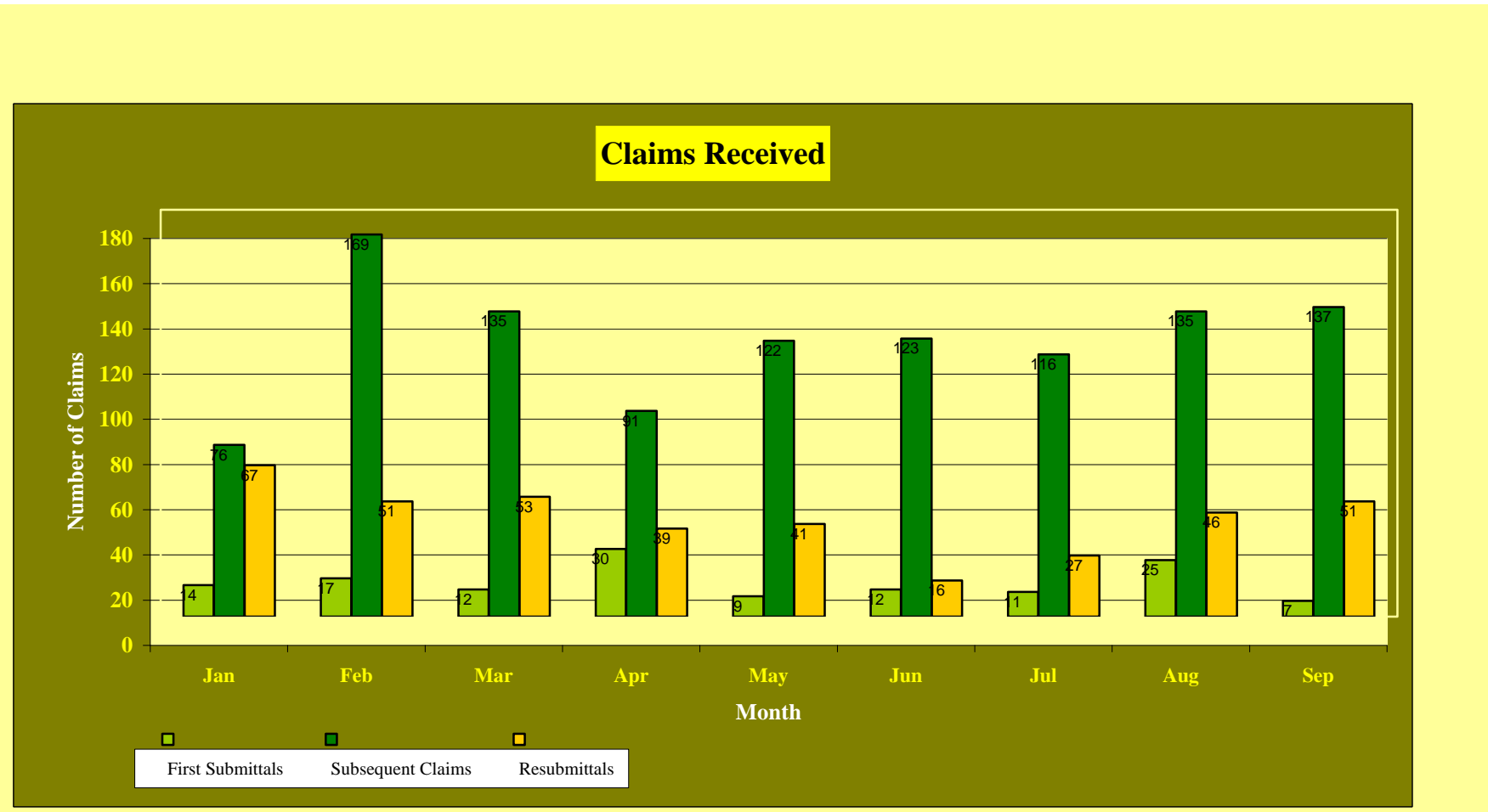
**Indiana Department of Environmental Management
Excess Liability Trust Fund
Claims Received by Calendar Year**



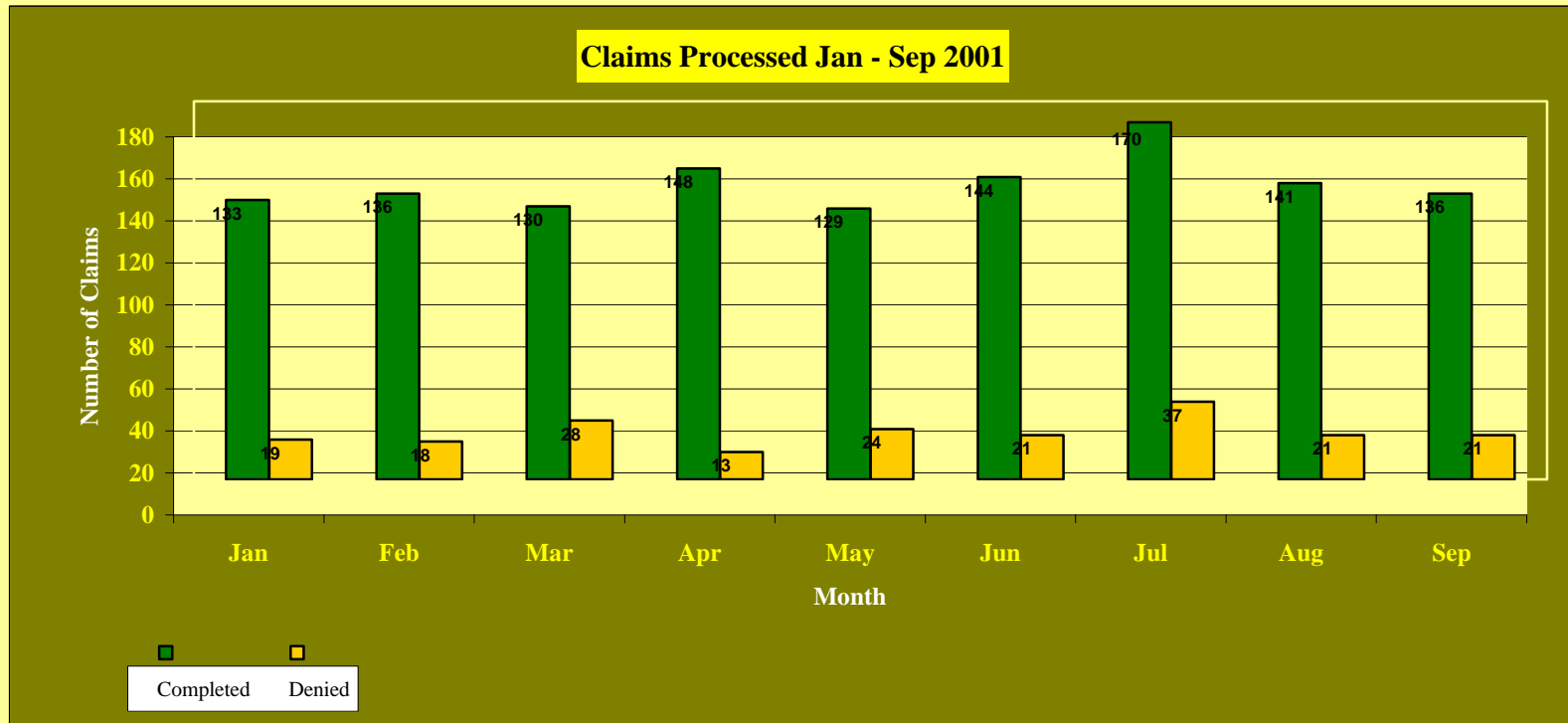
**Indiana Department of Environmental Management
Excess Liability Trust Fund
Amount Requested vs. Amount Reimbursed**



Indiana Department of Environmental Management
Excess Liability Trust Fund
Claims Processed
January 2001 through September 2001



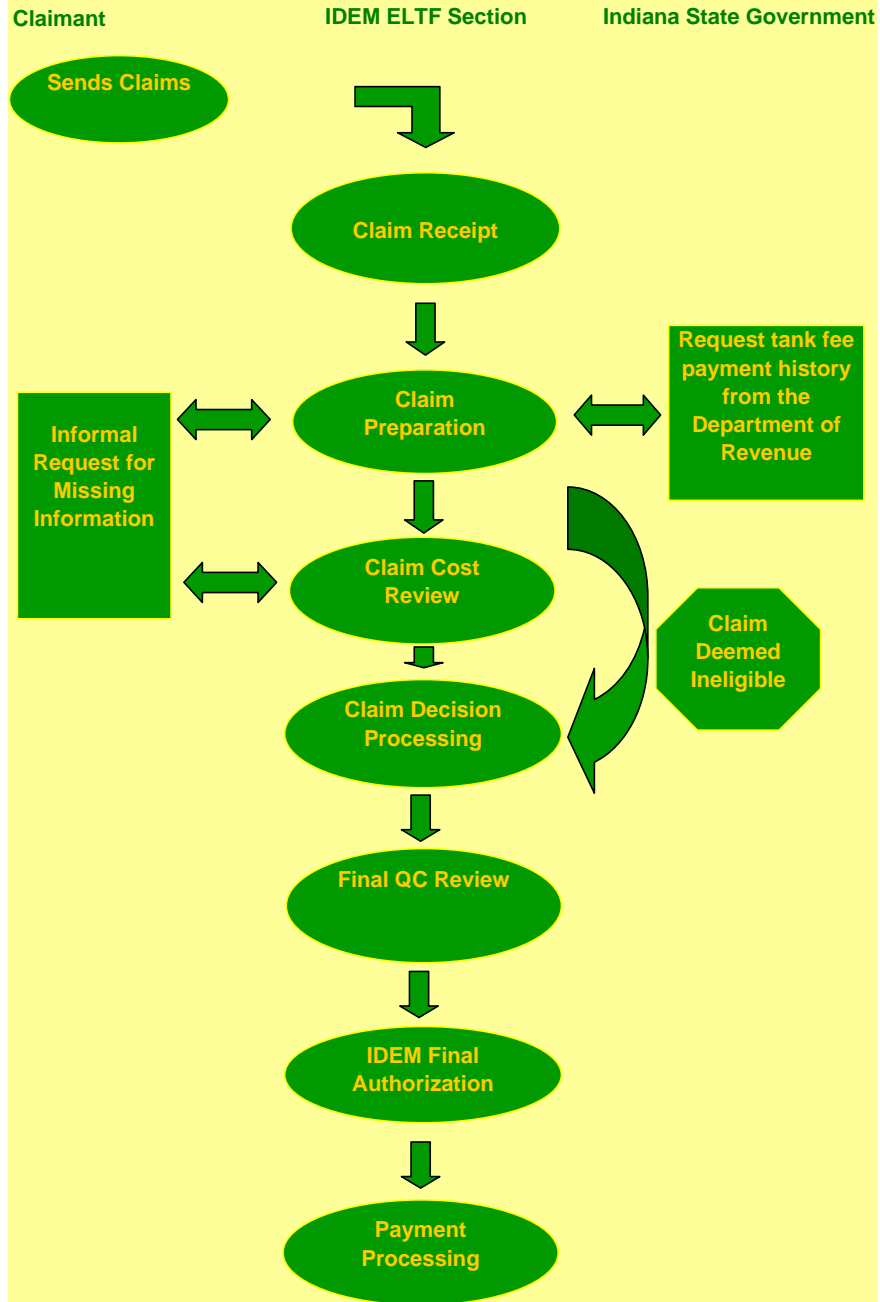
Indiana Department of Environmental Management
Excess Liability Trust Fund



APPENDIX B

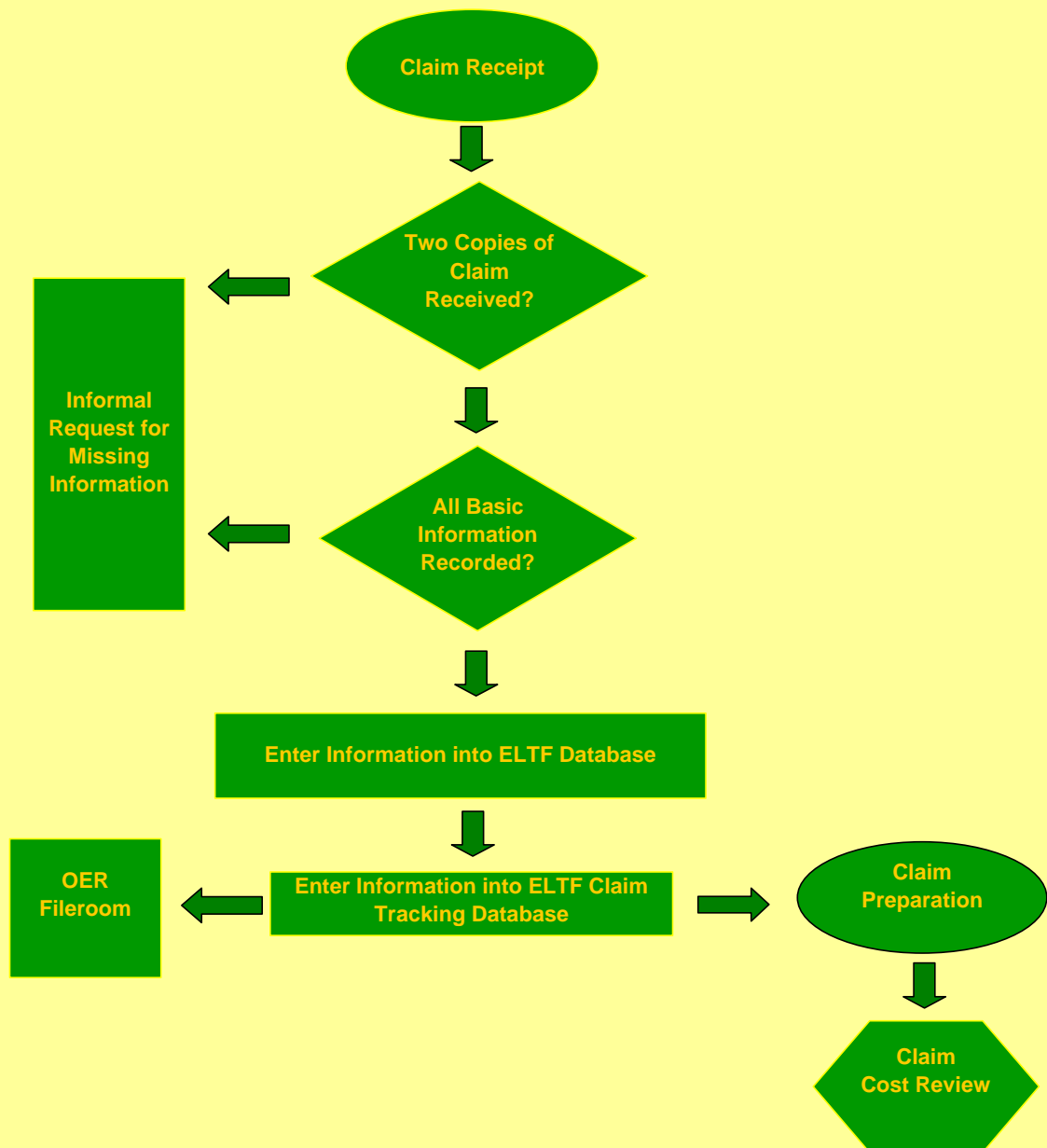
IDEM EXCESS LIABILITY TRUST FUND

General Process Flow

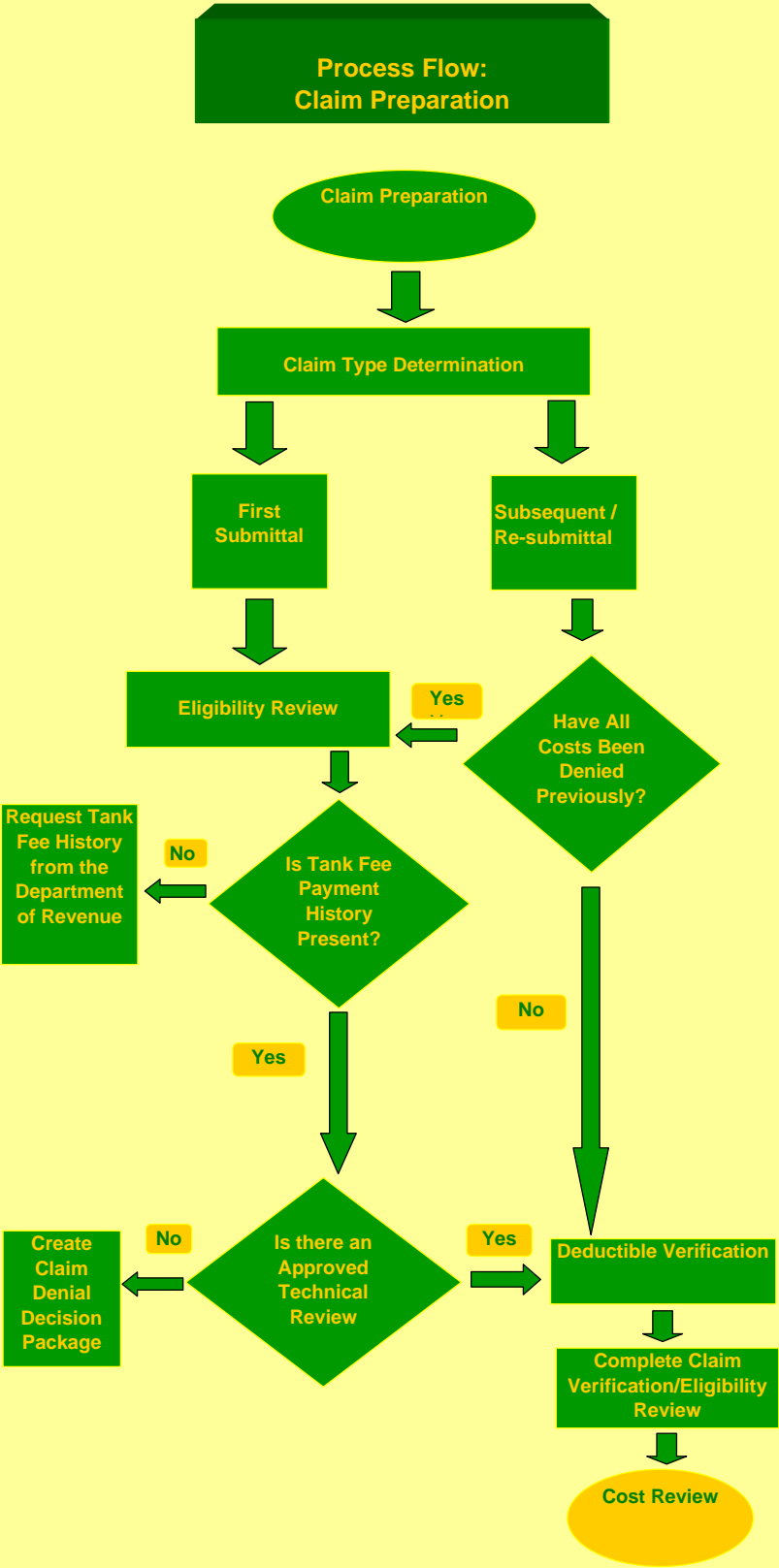


IDEM EXCESS LIABILITY TRUST FUND

Process Flow: Claim Tracking



IDEM EXCESS LIABILITY TRUST FUND



IDEM EXCESS LIABILITY TRUST FUND

